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695 was listened to with undivided attention. The matter was then thoroughly discussed by the councillors, the verdict being arrived at by the decision of the majority. If the accused was acquitted, a few head of cattle from the herds of his accusers were adjudged to him as compensation. But if he was found guilty, and the headman, 696 in whose hands the final sentence lay, pronounced in favour of death, the sentence was immediately executed. The headman, as chief executioner, rushed towards the criminal and felled him to the ground [694] with a heavy blow of the kirri; all the other men then violently attacked him until he was beaten to death.[1]

612 No distinction was made in the execution of this sentence according to the status, wealth, age, or sex of the criminal; the headman himself, if found guilty of such a crime, would be dealt with in the same [709] way. The body of the criminal, however, was buried with all the customary formalities observed in normal cases of death; his property was inherited as usual by his heirs, and no stigma attached to them as 631 a result of his crime and his fate. There is good reason for supposing 695 that this corporal punishment was not necessarily carried to extremes, but could be made more or less severe, according to the nature of the case and the decision of the council.

642 There was no appeal from the verdict of the kraal council, either 644 in civil disputes or in crimes. The main tribal council, consisting of the chief and the kraal headmen, dealt only with disputes between different kraals. It was summoned by the chief on receipt of any complaint, and its proceedings were conducted along the same lines as those of the kraal councils.

642 The description given above can hardly be regarded as exhaustive or even as entirely trustworthy. Its interest lies mainly in the comparison it affords with the conduct of trials among the Naman, about whose legal usages we have more adequate information.[2] The local kraal councils can deal with civil disputes and minor offences, and impose corporal punishments or fines; but there is always an appeal from their judgments to the main tribal council, to which all cases of importance are also referred as a court of first instance. No special distinction is made in procedure between civil and criminal 643 cases. The judges in all important trials are the elected councillors

[1] An eye-witness account of such an execution, in which four men were beaten to death, is quoted by Godée-Molsbergen, *op. cit.*, i, 172–3.

[2] The fullest accounts are given by Wanderer, "Ueber Rechtsverwaltung und Rechte der Hottentotten," 270–6; Vedder, "The Nama," 142–45; Kohler, "Das Recht der Hottentotten," 312–7 (cf. also Hahn, "Die Nama-Hottentotten," 306; von François, *Nama und Damara*, 221; Wanderer, "Die Khoi-Khoin," 324–5; *Report on the Natives of S.W.A.*, 73–4 *passim*.

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695 questions, but prefer to arrive at their point by circumlocutions.
[695] When they have probed the matter to their satisfaction, or when the accused has either confessed or been reduced to helpless silence by all the cross-questioning, both parties, together with the witnesses, have to withdraw to a distance. The case is then discussed among themselves by the councillors, and judgment is arrived at unanimously, if possible. Only in cases where there is no consensus of opinion is the matter referred to the chief, whose casting vote settles the question finally.

The verdict, opening with the words: "In the name of the chief's law," is pronounced by the chairman, and is forthwith executed.
•696 Sentences of death are carried out by the official executioner, who is
681 appointed from time to time by the council, and by his assistant; if corporal punishment has been decided upon, the *ama-ndi*, "thrashing-man," gets into action; while any fines levied are collected by the magistrate. The costs of the action, in the form of goats paid as court fees, always fall upon the losing party. If this is the defendant, he must also replace the goats delivered at the beginning of the case by the complainant.

695 No torture is employed in legal trials, nor are there any special oaths or ordeals. Wanders describes, however, what he terms a sort of duel by warrant, which was sometimes resorted to in the past. This duel, *ǃkîga*, could take place with or without weapons. When the councillors were unable to secure harmony between the litigants, the oldest of them took some sand in the palm of each hand, which he held out before the two men, or else he poured a little sand on to their shoulders. If the challenge was accepted, the sand was brushed away; but if one of the men refused it, he was branded as a coward and held to be in the wrong. Where both accepted the challenge, the councillors formed a ring around them. They then attacked each other with their fists, kicked, wrestled, and hit, until one of them
[574] was overpowered. Reconciliation followed. The victor slaughtered a fat sheep, which was eaten by him and his opponent, with the councillors as guests. Before the feast the two men shook hands in a friendly manner, and as sign of their reconciliation they ate together out of one dish. Finally there followed a general shaking of hands. The duel with weapons was of a more serious nature, and might even result in death. If reconciliation could not be brought about by the councillors, the two men left the court in a rage, and fought with their kirris or spears until one of them was stretched senseless, perhaps

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68 Theft as a rule is punished by flogging, administered with the sjambok, and the thief must also make twofold restitution. Sexual crimes, such as incest, adultery, and rape, are, as we have seen, punished by fines, floggings, confiscation of property, or even by death, according to the nature and circumstances of the offence. A man who insults or slanders the chief or a councillor is flogged till he becomes unconscious; if he slanders a dead man he is fined one or two head of small stock, and if the offence is repeated he receives fifty lashes and must pay a fine in cattle. The infliction of mild bodily injuries meets with a fine, and the culprit must, in addition, support the victim and his family until the former is well again; if the injured man is himself the cause of the strife, his assailant goes free. In severe bodily injuries leading to death, it is specially investigated if the wounds were deliberately caused or not. In the latter case all the assailant's property is given to the relatives of the deceased, and he receives a severe flogging as well, unless his relatives ransom him by paying a heavy fine. In the former case he was sentenced to death. The death sentence was also imposed for high treason, deliberate murder, and incorrigible stealing. Incorrigible thieves were stoned or beaten to death, but a murderer was killed in the same way as he had caused the death of his victim. If by shooting, then he was also shot; if by stabbing, then he was stabbed; if by beating, then he was also beaten to death, and so on. Wanderes states also that a sorcerer who by his magic had caused the death of a man was killed and his body burned, but this lacks confirmation. Attempted homicide is punished by a flogging of from a hundred to a hundred and fifty lashes, unless the intended victim is the chief, when in former days the assailant was sentenced to death.

69 In the infliction of these punishments, the poorer members of the tribe, the servants and other inferiors usually come off worst. 696 This is a point made by several reliable observers, and emphasized by Vedder, when he says: "Since South-West has become a colony and a mandated territory, confidence in their own jurisdiction has decreased even where it has been left in their hands. They do not regard their own judges as impartial enough to administer justice to the complainant or accused. This is no wonder! As a result of their close cohabitation it is very difficult for a judge to administer justice quite regardless of the person and his property."[1] The more wealthy and influential people are on the whole treated less severely,

[1] Op. cit., 130.

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and formerly they could even escape the death sentence for murder by a payment of cattle to the chief. But the possible shielding of murderers in this way always exposed them to the blood feud. If, through favouritism or for political reasons, a murderer was acquitted by the council, the nearest relative of the victim had the right to take the law into his own hands and to kill him.

Blood vengeance, *//khawâ*, for the death of a near relative was a sacred duty to the Hottentots.[1] A son avenged the death of his father, a brother his brother, and if there was no son to take vengeance for the death of a woman her husband was obliged to do so. Killing in such a case was no crime, and neither the chief nor the council had the right to intervene and punish the avenger for his act. The case is cited of the well-known traveller and explorer Charles John Andersson, who about 1861 shot an Afrikander Hottentot near Windhoek in what he alleged was self-defence. He reported the matter to the chief Jonker Afrikaner, and as a result was brought before the chief and tribal council for trial. The council, after hearing the evidence, was satisfied, rightly or wrongly, that Andersson had exceeded his rights and had gone too far. But in view of the fact that he was a European and a British subject, the chief was reluctant to punish him. So, "I release you," said Jonker, "but," he added, "according to our law the brother of Hartebeest will kill you and must kill you, so flee for your life."[2]

In all probability the blood feud was formerly very extensively practised, especially in connection with the clan organization. We know from accounts left us by travellers among the Naman in the early part of last century that at that time the vendetta was still in full force among them, and the chief was unable in the interests of the tribe as a whole to prevent two clans from carrying out vengeance one on the other, or to force them to accept compensation. Alexander gives an account of such a vendetta among the Bondelswarts when he was travelling among them in 1836, and in the Rhenish Mission Record for 1836 there is an account of another vendetta at Bethanie among the !Aman Hottentots.[3] According to Wandres the feud ceased when revenge for the death had been taken, but other accounts imply that it was kept up as a continuous vendetta. Hahn states that

[1] Hahn, "Die Nama-Hottentotten," 306; Wikar, op. cit., 134; Kohler, loc. cit.; Wandres, op. cit., 106.
[2] *Report on the Natives of S.W.A.*, 74.
[3] Hoernlé, "Social Organization of the Nama," 16, quoting Alexander, op. cit., i, 187, cf. 211; and *Berichte der Rheinischen Mission*, 1836, p. 174.

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Ontrent over vijf jaren is 't gebeurt, dat zeker persoon, een grote vriend en na-maghschap van den *Koshqua* of Koning van de *Saldanhars*, in bloetschande was vervallen, doch deed ernstwel, zonder aenzicht op zijnen persoon, recht over den zelven, maer raekte magtens door grote voorspraek met een roode gesetting, en ontnemen van al zijne beesten, en hallingschap vry, en begaf zich by de Goringhaikonas, by het Fort van goeder hope, verlaten van al zijne vrienden, met beloffte eehter, dan soo hy zich als te vooren weder wilde dragen, al dan weder in genade soude aengenomen worden. Een teken van zoch eenige tuchtt onder deze wilden.

Straffe der Doodslagen en Quetsuren.

Wanneer iemant den eenen of den anderen, door gramschap of toornigheit, komt doot te slaen of te slaken, zulx wort hy hen mede voor een gewichtige zake opgenomen, inzonderheit indien een persoon van aenzienen, redelijk van wijsheit, staet en rijkdom, zulx gepleeght heeft; overmits zy seggen, zulk een persoon, met meer verstant als een ander, beter behoorde te weten, en eenen anderen met goede exempelen, (aengesien hy mede een vermin-wijser is) wijselijk voor te gaen. Wealhalve wort zulk eenen de hals aen eenen boom toegeworght, en doot in het zelfste graf by den dooden gelegt; daer in tegendeel andere onmenschelijke tyranderen luiden 't zelven door vee, en geringer straffe beter kunnen afmaken, dan een grote wijse (of, soo gemeent wort) raetgever. Zoomtijgen misdadigen, die de doot verdient hebben, worden de knien doorsnegelt en met een yzere spanne aen de schouderen vast gebecht, en dus met een langsame doot gestraft.

Hutten.

Wat hunne huisingen belangt, zy leven als d'Arabiers op 't veld, in hutten, gemaekt van enkele krom gebogen stokken, in 't rond gezet, en met bies-matten, die zy zelfs weer net en aerdigh weten te vlechten, overdekt; de sommigen zijn wel soo groot, dat bequamelijk tien of twintigh man, met vrou en kinderen, daer in hun verblijf kunnen houden;

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[a]) Dapper's account of Hottentot legal procedure and matter's of punishment is much fuller than that of most other observers, so that its accuracy cannot be easily estimated. From such other information as is available, however, it seems that offences such as murder, manslaughter, treason, theft, incest, adultery and sodomy were all regarded as crimes punishable by death, and were tried by the chief and his council. The court sat in a circle, with the accused in the centre, where he could hear all that

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It happened about five years ago that a certain man, a great friend and kinsman of the Koshqua or King of the Saldanhers, sank so low as to commit incest. But justice was done upon him as well, without regard for his person. He managed nevertheless by pleading hard to get off with a whipping, the confiscation of all his cattle, and exile; and betook himself to the Goringhaikonas at the Fort, deserted by all his friends, but with the promise that if he should conduct himself as before them he would again be taken into favour. This shows again that even to those savages discipline is not unknown. 684

PUNISHMENT OF HOMICIDE AND ASSAULT.

They also regard it as a serious offence when anybody, through anger or passion, beats or stabs someone else to death, especially when it has been done by a man of reputed wisdom and important status and wealth. They say that such a man, gifted with more understanding than others, ought to know better, and should set them a good example, considering that he is also a judge. He is in consequence strangled on a tree, and then laid dead in the grave. The less sophisticated common people, on the other hand, can get off more lightly for the same offence by paying cattle, and so have a lighter punishment than important and reputedly wise counsellors. Some Hlakwa who have merited death have their knees pierced through and attached by an iron peg to the shoulders, and thus are punished by a lingering end.[77] 682

DWELLINGS.

As regards their dwellings, they live, like the Arabs of the desert, in huts, made of some sticks bent over crooked and ranged in a circle, and covered over with reed mats, which they can weave very nicely. Some of these huts 342

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was said and himself be heard by everybody around. The accuser stated his case, producing all his proofs and witnesses. The accused in return put forward whatever defence he could, and the matter was then thoroughly discussed by the councillors, the verdict being arrived at by the decision of the majority. If the accused was acquitted, a few head of cattle from the herds of his accusers were adjudged to him as compensation. But if he was found guilty, and the chief, in whose hands the final sentence lay, pronounced in favour of death, the sentence was immediately executed. The chief, as principal executioner, rushed upon the criminal and felled him to the ground with a heavy blow of the kirri; all the other men present then followed up the attack, until the man was beaten to death. There is no mention of the more elaborate methods of killing referred to by Dapper. (Schapera, *op cit.*, 389 f.) 695 696